

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-140691
		C-160694
Plaintiff-Appellee,	:	TRIAL NOS. B-1306951
		B-1305791
vs.	:	
		<i>JUDGMENT ENTRY.</i>
KENDALL FLUCAS,	:	
Defendants-Appellant.	:	
	:	
	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.1.

After pleading guilty, defendant-appellant Kendall Flucas was convicted in two separate cases of one count of aggravated robbery under R.C. 2911.01(A)(3) and one count of conspiracy to commit murder under R.C. 2923.01(A)(1) and 2903.02. Both were first-degree felonies. At the sentencing hearing, Flucas orally moved to withdraw his pleas. The trial court overruled the motion. It sentenced him to nine years in prison on the aggravated-robbery count and 11 years on the conspiracy count, to be served consecutively. This appeal followed.

In his first assignment of error, Flucas contends that the trial court erred by imposing sentences that were not supported by the findings in the record. He argues that the sentences were excessive and that the court failed to consider the existence

of substantial grounds for mitigation under former R.C. 2929.12(C)(4). This assignment of error is not well taken.

The record shows that the sentences were in the appropriate statutory ranges for first-degree felonies. *See* former R.C. 2929.14(A)(1). It also shows that the trial court considered the purposes and principles of sentencing and the various factors under R.C. 2929.11 and former 2929.12. *See State v. Bohannon*, 1st Dist. Hamilton No. C-130014, 2013-Ohio-5101, ¶ 7; *State v. Alexander*, 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349, ¶ 23-24.

Further, the record shows that the trial court discussed the mitigating and aggravating factors extensively. It heard Flucas's arguments in mitigation and considered them. But it found other facts, such as the circumstances of the offenses, the harm suffered by the victim, and Flucas's criminal history, to be more persuasive.

Flucas has not affirmatively demonstrated that the trial court did not consider the appropriate factors. *See Bohannon* at ¶ 7-9. On the record before us, we cannot say that Flucas's sentences were clearly and convincingly contrary to law. *See State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.). Consequently, we overrule his first assignment of error.

In his second assignment of error, Flucas contends that the trial court erred in accepting his pleas because he did not make them knowingly, intelligently, and voluntarily. He argues that the trial court failed to comply with Crim.R. 11(C) in accepting the pleas. This assignment of error is not well taken.

Crim.R. 11(C) "was adopted * * * to facilitate a more accurate determination of the voluntariness of a defendant's plea by assuring an adequate record for review." *State v. Nero*, 56 Ohio St.3d 106, 107, 564 N.E.2d 474 (1990); *State v. Fields*, 1st Dist. Hamilton No. C-090648, 2010-Ohio-4114, ¶ 8. A trial court must strictly comply with the provisions of the rule related to the constitutional rights a defendant waives by entering a guilty plea. *State v. Ballard*, 66 Ohio St.2d 473, 476-478, 423

N.E.2d 115 (1981); *Fields* at ¶ 8. It must substantially comply with the provisions of the rule relating to other notifications. *Ballard* at 475-476; *Fields* at ¶ 8.

The record shows that the trial court complied with the requirements of Crim.R. 11(C). It conducted a meaningful dialogue to ensure that Flucas's pleas were made knowingly, intelligently and voluntarily. *See Fields* at ¶ 8-9; *State v. Simmons*, 1st Dist. Hamilton No. C-050817, 2006-Ohio-5760, ¶ 18. Flucas acknowledges that much of his argument relies on matters outside the record on appeal, which this court cannot consider. *See State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus; *Fields* at ¶ 15. Consequently, we overrule Flucas's second assignment of error.

In his third assignment of error, Flucas contends that the trial court erred in failing to permit him to withdraw his guilty pleas. He argues that his motion was made in good faith and that presentence motions to withdraw should be freely and liberally granted. This assignment of error is not well taken.

While the general rule is that a presentence motion to withdraw a plea should be freely and liberally granted, the defendant does not have an absolute right to withdraw a plea before sentencing. *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992); *Fields*, 1st Dist. Hamilton No. C-090648, 2010-Ohio-4114, at ¶ 12. The decision whether to grant or deny a presentence motion to withdraw a plea lies within the trial court's discretion. *Xie* at 527; *Fields* at ¶ 12.

The record shows that Flucas was represented by competent counsel, that he was given a full hearing before entering his pleas, and that he was given a hearing on his motion to withdraw his pleas in which the trial court considered his arguments in support of the motion. *See Fields* at ¶ 12. The trial court specifically went through all of the factors this court has stated it should consider. *See State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). Under the circumstances, we cannot hold that the trial court's decision to deny Flucas's motion to withdraw his

pleas was so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion. *See Xie* at 527; *Fields* at ¶ 14. Therefore, we overrule Flucas's third assignment of error.

Finally, in his fourth assignment of error, Flucas contends that he was denied the effective assistance of counsel. Flucas has not demonstrated that his counsel's performance was deficient or that but for counsel's deficient performance, he would not have entered his guilty pleas. *See Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *State v. Peoples*, 1st Dist. Hamilton No. C-050620, 2006-Ohio-2614, ¶ 22. Therefore, he has failed to meet his burden to show ineffective assistance of counsel. *See State v. Hamblin*, 37 Ohio St.3d 153, 155-156, 524 N.E.2d 476 (1988); *State v. Thomas*, 1st Dist. Hamilton No. C-120561, 2013-Ohio-5386, ¶ 50. Again, much of Flucas's argument relies upon matters outside the record, which we cannot consider. *See Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500, at paragraph one of the syllabus; *Fields* at ¶ 15. Consequently, we overrule his fourth assignment of error and affirm the trial court's judgments.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on March 17, 2017
per order of the court _____.
Presiding Judge